

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

November 2, 1998

**IN RE: UNIVERSAL SERVICE  
GENERIC CONTESTED CASE**

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**DOCKET NO. 97-00888**

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**ORDER ON THE MOTION BY BELL SOUTH TELECOMMUNICATIONS, INC. TO  
REHEAR, AND RECONSIDER ISSUES 8 AND 9(J) OF THE UNIVERSAL SERVICE  
PHASE I DECISIONS**

**AND**

**ON THE PETITION OF UNITED TELEPHONE-SOUTHEAST, INC FOR  
RECONSIDERATION OF ISSUES 1(C) AND 9(J) AND CLARIFICATION OF  
ISSUES 6 AND 11 OF THE UNIVERSAL SERVICE PHASE I DECISIONS**

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This matter came before the Tennessee Regulatory Authority (the "Authority") for consideration of the Motion of BellSouth Telecommunications, Inc. ("BellSouth") to Rehear and Reconsider decisions in the May 20, 1998, Interim Order on Phase I (the "BellSouth Motion") and the Petition of United Telephone-Southeast, Inc. ("United") for Reconsideration of the Interim Order on Phase I of Universal Service (the "United Petition").

**I. Travel of the Case**

The Universal Service proceeding was commenced by the Authority at a regularly scheduled Authority Conference held on July 1, 1997, pursuant to Tennessee Code Annotated § 65-5-207. Pre-Hearing Conferences for the resolution of various procedural issues were held on August 5, 1997, and September 23, 1997. The Issues to be addressed in Phase I of this proceeding were approved and adopted at a specially scheduled Authority Conference on

October 30, 1997. A Hearing on the Phase I Universal Service Issues was held on December 8 to 12, 1997. Phase I of the Universal Service proceeding came before the Directors for their deliberations and decisions at a regularly scheduled Authority Conference on February 3, 1998. An Interim Order on Phase I of the Universal Service proceeding was entered by the Authority on May 20, 1998. A copy of the Table of Contents from the Interim Order on Phase I of Universal Service is attached to this Order as Exhibit A.

In its motion BellSouth alleged material errors of fact and law concerning Issue 8, the definition of implicit subsidy, and Issue 9(j), the revenue benchmark. The United Petition requested Reconsideration of Issue 1(c), the exclusion Non-primary residential lines from Universal Service Fund Support, and Issue 9(j), the inclusion of all residential revenues in the revenue benchmark. In addition, United requested clarification regarding Issue 6, the exemption of rural carriers and cooperatives granted exemption from contributing to the Universal Service Fund, and Issue 11, discounts for schools and libraries. Both the BellSouth Motion and the United Petition were filed on June 1, 1998.

On July 9, 1998, AT&T of the South Central States, Inc. ("AT&T") filed a reply in opposition to the BellSouth Motion and the United Petition. On July 21, 1998, TCG MidSouth, Inc. ("TCG") filed a Response in opposition to the BellSouth Motion and United Petition. Both AT&T and TCG argued that neither BellSouth nor United provided sufficient legal support to sustain a motion for rehearing or reconsideration, and that these motions should, therefore, be denied. AT&T acknowledged in its Reply that United's request for clarification was appropriate. On July 31, 1998, Time Warner Communications of the Mid-

South, L.P. ("Time Warner") filed a response to the BellSouth Motion and United Petition, excluding United's Motion for Clarification on Issues 6 and 11. The Time Warner response prayed that the Authority deny the BellSouth Motion and the United Petition on the grounds that there were no material errors of law or fact pursuant to Tenn. Code Ann. § 65-2-116(1), (2) to sustain the Motions.

The BellSouth Motion and the United Petition came before the Directors at a regularly scheduled Authority Conference held on August 4, 1998. At that Conference, the Directors discussed rehearing, reconsideration and clarification of the issues pursuant to the pleadings. After consideration of the positions of the parties, the Directors made determinations and conclusions which are set forth below.

## **II. Issue 1(c) the exclusion of non-primary residential lines**

The Authority determined on February 3, 1998, that intrastate universal service support will be provided only on primary residential lines and not on business lines or additional residential lines. At that time the Authority also found that "The exclusion of the additional residential lines from the definition of Universal Service does not suggest that all residential lines are anything other than basic service and subject to existing law applicable thereto."<sup>1</sup> Although the Directors recognized that universal service as articulated in Tenn. Code Ann. § 65-5-207(a) is characterized by the elements defined in Tenn. Code Ann. § 65-5-208(a)(1), the scope of universal service coverage is, in their opinion, a public interest and policy decision. The Authority has long advocated affordably priced telephone service in order to achieve high

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<sup>1</sup> In re: Universal Service Generic Contested Case, No. 97-00888, Int. Or. at page 12 (Tenn. Reg. Auth. May 20, 1998). See also, In re: Universal Service Generic Contested Case, No. 97-00888, *Transcript of Directors' Conference, February 3, 1998, Volume III*, at page 6.

household penetration rates for basic, economic, safety, health, and general welfare needs. Enactment of Tenn. Code Ann. § 65-5-207 does not prevent the Authority from defining Universal Service in a manner consistent with the statutes and the intent of the General Assembly. Within this framework and given Tennessee's long-standing public interest and policy goals, additional residential lines are superfluous with respect to required support. The Directors opined that this position is consistent with Tenn. Code Ann. § 65-4-123 which requires that "universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable." At this point in the Universal Service proceedings, no party has definitively or persuasively asserted or rebutted that subsidies will be required for nonprimary residential lines. In fact it is plausible that United may itself be a net recipient from the Universal Service Fund. Additionally, the Directors concluded, consistent with the Authority's previous position, that the necessary flexibility would be built into the administration of the fund and that additional decisions will be made in Phases II and III of the Universal Service proceeding. The Directors, therefore, unanimously reaffirmed their decision of February 3, 1998, and denied United's motion for reconsideration on Issue (1)(c).

**III. Issue 8, the definition of implicit subsidy, and Issue 9(j) the revenue benchmark**

On Issue 8, the definition of implicit subsidy, and Issue 9(j), the revenue benchmark, the Directors unanimously found that rehearing and reconsideration were not necessary because these issues would not be completed until Phase III, rate rebalancing, of the Universal Service proceeding. The Directors also found that the Universal Service Order on Phase I was

an interim order and not a final order, and a motion for rehearing was premature. For these reasons, the Directors unanimously denied the BellSouth Motion to rehear and reconsider the Phase I Interim Order on Issue 8, definition of implicit subsidy, and Issue 9(j) the revenue benchmark, and the United Petition to reconsider Issue 9(j).

**IV. Issue 6, the exemption of rural carriers and cooperatives**

On Issue 6, rural carriers and cooperatives granted exemption from contributing to the Universal Service Fund, the Directors unanimously determined that a clarification would be appropriate. The Directors unanimously found that the word "and" on page 27 of the Interim Order should be changed to the word "or" to read as the statement does on page 8 of the Interim Order. The paragraph on page 27 at 1) shall read:

1) A temporary exemption from contribution by rural carriers and cooperatives as long as the rural carrier or cooperative is not serving non-rural customers **or** has not entered into an interconnection agreement to serve non-rural customers[.]  
(Emphasis added)

**V. Issue 11, discounts for schools and libraries**

United suggested in its Petition that there was an inconsistency between the transcript from the February 3, 1998, Authority Conference and the Interim Order entered May 20, 1998, on Issue 11. The majority of the Directors determined that there was no inconsistency. The majority found that the February 3, 1998, deliberations focused on language that reaffirmed the Authority's commitment to continue to provide discounts for Tennessee's schools and libraries on the possibility that federal funds could be depleted. The majority stated that the "greater of" language was not meant to indicate that the federal discount, if available, would not apply

of' language was not meant to indicate that the federal discount, if available, would not apply to the already discounted tariff prediscount price. The majority of Directors found, therefore, that no inconsistency existed and denied United's request for clarification.<sup>2</sup>


**IT IS THEREFORE ORDERED THAT:**

1. The Motion of BellSouth Telecommunications, Inc. to rehear and reconsider the Phase I Interim Order on Issue 8, definition of implicit subsidy is denied;
2. The Motion of BellSouth Telecommunications, Inc. to rehear and reconsider the Phase I Interim Order on Issue 9(j), the revenue benchmark is denied;
3. The Petition of United Telephone-Southeast, Inc. for Reconsideration of the Phase I Interim Order on Issue 1(c), non-primary residential lines excluded from Universal Service Fund Support is denied;
4. The Petition of United Telephone-Southeast, Inc. for Reconsideration of the Phase I Interim Order on Issue 9(j), all residential revenues included in the revenue benchmark, is denied;
5. The Petition of United Telephone-Southeast, Inc. for clarification of the Phase I Interim Order on Issue 6, rural carriers and cooperatives granted exemption from contributing to the Universal Service Fund, the "and" on page 27 of the Interim Order is changed to an "or" as on page 8 of the order;
6. The Petition of United Telephone-Southeast, Inc. for clarification regarding the Phase I Interim Order on Issue 11, discounts for schools and libraries is denied; and


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<sup>2</sup> Director Kyle stated that her position was reflected in the February 3, 1998, transcript, and voted no on the motion for clarification.

7. Any party aggrieved with the Authority's decision in this matter may file a petition for reconsideration with the Authority within ten (10) days from and after the date of this Order.

  
CHAIRMAN

  
DIRECTOR

  
DIRECTOR

ATTEST:

  
EXECUTIVE SECRETARY